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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,182	02/11/2008	Ingo Schulze	2003P00857WOUS	1368

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER

PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1711

NOTIFICATION DATE	DELIVERY MODE
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08/08/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/560,182	Applicant(s) SCHULZE, INGO	
	Examiner Joseph L. Perrin	Art Unit 1711	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 July 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 25-28 and 35-42.
 Claim(s) withdrawn from consideration: 15-24 and 35-42.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☒ Other: See Continuation Sheet.

/Joseph L. Perrin/
 Primary Examiner, Art Unit 1711

Continuation of 3. NOTE: The proposed amendment requires further consideration and search, and complicates issues for appeal. Furthermore, the proposed amendment FAILS to meet the requirements of a COMPLETE REPLY in accordance with the Final Office action and the Finality of the Restriction Requirement.

Continuation of 13. Other: Regarding the Restriction Requirement, Applicant provides new traversal arguments for a THIRD time despite the Restriction Requirement being made Final TWO Office actions prior in the Non-final Action of 01/28/2011. The Finality of the Restriction Requirement does not invite Applicant to continually traverse different arguments in each response. Rather, the Finality of the Restriction Requirement means that Applicant timely traversed the Restriction, the arguments were not persuasive, and the Restriction is FINAL. No further comment is required upon Finality of the Restriction Requirement.

Examiner notes that Applicant was clearly put on notice that a complete reply to the Final rejection must include cancellation of nonelected claims or other appropriate action under 37 CFR 1.144 and MPEP 821.01. This After Final response FAILS to meet the requirements of the complete reply requirements as indicated in the Final rejection. Rather, Applicant has amended the withdrawn claims and continued to present new traversal arguments well after FINALITY of the Restriction Requirement was established which FAILS to meet the aforementioned requirements of a complete reply. The failure to provide a complete reply at least partially has resulted in the non-entry of the After Final amendment.

Examiner further notes however that while Applicant had reserved the right to petition the claims filed 12/09/2005 that were properly traversed prior to the Restriction being made FINAL, the instant amendment provides significant amendments to the the withdrawn claims that has no effect whatsoever in the status of the withdrawn claims. The withdrawn claims remain withdrawn until either cancelled or subject to rejoinder upon allowance of the elected claims. Examiner knows of no Rule or Statute that allows Applicant to reserve the right to petition a restriction requirement with new traversal arguments and new claim scope AFTER FINALITY OF THE RESTRICTION has been made. Simply stated, all arguments and amendments to the non-elected claims made AFTER FINALITY OF THE RESTRICTION are considered untimely and not considered. Should Applicant disagree, Applicant is urged to point to the provision of the MPEP which states that Applicant may continue to traverse a Restriction with new arguments and amendments at any time after the Restriction has been made FINAL.

For the THIRD time in this application, Examiner reminds Applicant that this Restriction has been made FINAL. In accordance with MPEP 821.01, a complete response MUST include CANCELLATION OF NONELECTED CLAIMS or OTHER APPROPRIATE ACTION. Examiner notes that OTHER APPROPRIATE ACTION such as a PETITION from requirement for restriction would be limited to the traversal arguments and pending claims prior to the Restriction being made FINAL as they were properly made of record. Untimely arguments and amendments made AFTER FINALITY OF THE RESTRICTION are improper and will not be considered.

Applicant may continue to amend the method claims incorporating the subject matter of the apparatus claims since the withdrawn claims may be subject to rejoinder should the elected apparatus apparatus be placed in condition for allowance. However, withdrawn claims remain withdrawn and not formerly examined on the merits unless they are eligible for rejoinder by depending from or otherwise including all of the limitations of an allowable claim. See MPEP 821.04 for possible rejoinder of the nonelected claims upon indication of allowance of the elected apparatus claims.